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Supreme Court of the United States

OCTOBER TERM, 1957

No. 469

CONSTANTINE MACRIS,

Petitioner,

—against—

SOCIEDAD MARITIMA SAN NICOLAS, S. A., and PETMAR AGENCIES, INC.,

Respondents.

THE BRIEF OF RESPONDENTS, SOCIEDAD MARITIMA SAN NICOLAS, S. A. AND PETMAR AGENCIES, INC., IN OPPOSITION TO THE PETITION OF CONSTANTINE MACRIS FOR A WRIT OF CERTIORARI

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On the Brief.

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Opinions Below

The memorandum decision of the United States District Court for the Southern District of New York has not been officially reported; it appears in Appendix A of the Petition at pages 15-19. The opinion of the same court on Petitioner's motion for reargument of a denial of a motion to amend the pleadings is reported in 19 Federal Rules Decisions, page 397; it appears in Appendix A of the Petition at pages 9-14.

The opinion of the court below has not been officially reported; it appears in Appendix B of the Petition at pages 20-25.

Jurisdiction

It is not disputed that there is jurisdiction under Title 28, U. S. C. Section 1254 (1). It is presumed that Petitioner's reference (Petition, p. 2) to Section 1257 of Title 28, which refers to appeals from State Courts, is an inadvertent mistake.

Questions Presented

1. Whether a shipowner or a vessel (apart from the consideration of maintenance and cure) is liable to a seaman for personal injuries sustained in the course of his duties, without proof of any negligence, on the owner's part, or of unseaworthiness of the vessel.

2. Whether there is a denial of due process of law if the trial court, within the exercise of its discretion, denies a motion to amend.

Statement

Petitioner, a Greek citizen, sued a Panamanian owner of a vessel of Liberian registry (Petition, Appendix A, pp. 10, 18) and sought recovery for personal injuries under the Jones Act, 46 U. S. C. A. § 688, and the general maritime law (Petition, Appendix B, p. 20). Petitioner concedes (Petition, p. 3) that there is no issue of fact and that the facts are clearly and accurately set forth in Appendix A, including the footnotes. The trial court awarded Petitioner compensation only for maintenance and cure, but found no proof of negligence or unsea-

worthiness with regard to Petitioner's claim for indemnity for personal injury either within the scope of the pleadings, or with regard to the matters which Petitioner sought to include in the pleadings by amendment after adverse decision. The Court below affirmed the decision of the trial court in these particulars and also found that the trial court's denial of the motion to amend was clearly within its discretion and that, in any event, the denial was not prejudicial because there was no proof of negligence or unseaworthiness in any respect (Petition, Appendix B, pp. 23-24).

Argument

I. Petitioner's contention, that a vessel or her owner should be held liable to indemnify a seaman for personal injuries suffered in the course of duty on the vessel without the necessity of proving that such injuries were caused by negligence or unseaworthiness, is clearly unsound and contrary to the long established principles of applicable law. Petitioner's allusions (Petition, pp. 2-7) to improvident orders and proper orders are without merit. The trial court and the court below specifically found that there was no proof of negligence or of unseaworthiness.

The principles of the general maritime law set forth in *The Osceola* (1902), 189 U. S. 158, still obtain, that a seaman, apart from his right to maintenance and cure, is not entitled to indemnity for injuries caused by the negligence of the master or crew, but he is entitled to indemnity for injuries caused by unseaworthiness. *The Osceola*, supra, has

been consistently followed and cited with approval by this Honorable Court: *O'Donnell* v. *Great Lakes Dredge & Dock Co.* (1943), 318 U. S. 36, 40; *Aguilar* v. *Standard Oil Co. of New Jersey* (1943), 318 U. S. 724, 730; *Mahnich* v. *Southern Steamship Co.* (1944), 321 U. S. 96, 99; *Swanson* v. *Marra Bros, Inc.* (1946), 328 U. S. 1, 4; *Seas Shipping Co., Inc.* v. *Sieracki* (1946), 328 U. S. 85, 90; *Fink* v. *Shepard Steamship Co.* (1949), 337 U. S. 810, 815; *Pope & Talbott, Inc.* v. *Hawn* (1953), 346 U. S. 406, 413; *Boudoin* v. *Lykes Bros. S. S. Co.* (1955), 348 U. S. 336, 338-339.

Under the Jones Act, 41 Stat. 1007, 46 U. S. C. A. § 688, which is not applicable here (Petition, Appendix A, p. 18) negligence of the owner of the vessel, or her officers or crew, must be established by the seaman in order to recover. *De Zon* v. *American President Lines* (1943), 318 U. S. 660, 665, 672.

Keen v. *Overseas Tankship Corp.* (2 Cir., 1952), 194 F. 2d 515; cert. den. 343 U. S. 966 (cited in the Petition at pp. 3, 4) defined the warranty of seaworthiness as applicable to fellow seamen, however, proof of breach of that warranty is always essential to recovery; *Boudoin* v. *Lykes Bros. S. S. Co.*, supra.

Socony-Vacuum Oil Co., Inc. v. *Smith* (1938), 305 U. S. 424 (cited in Petition, p. 3), held, essentially, that the rule applicable to a seaman's claim for personal injuries suffered in the course of duty, is that of comparative negligence, and not the rule of contributory negligence or assumption of the risk.

Pope & Talbott, Inc. v. *Hawn*, supra (cited in Petition, p. 5), held, essentially, that a longshoreman's suit for personal injury against the shipowner is a maritime tort, and that the principle of comparative negligence must be applied.

None of the cases cited by Petitioner hold, or even suggest, that under the existing laws of the United States (apart from consideration of maintenance and cure) a seaman is entitled to recover indemnity from the vessel or her owners for personal injury without proof that such injury was caused by negligence or unseaworthiness. The trial court and the court below found there was no proof of negligence or unseaworthiness (Petition, pp. 9-25), and these findings are not disputed by the Petitioner. Petitioner's proposal that a seaman should recover indemnity for injury suffered, absent proof of negligence or unseaworthiness, is not supported by either the statutory law or the general maritime law of this country, and would require Congressional action. It ought not to be directed to this Court; *Lauritzen* v. *Larsen* (1953), 345 U. S. 571, 593; *DeZon* v. *American President Lines*, supra, 672.

II. Petitioner's contention that the trial court's refusal of the requested amendment was a denial of due process is equally untenable.

Petitioner's request to the trial court for an amendment, after an adverse decision, was made under Rule 15 of the Federal Rules of Civil Procedure, and it was within the discretion of the trial court to grant or refuse this request. The court below held that the trial court was clearly within its discretion in denying the motion to amend under the circumstances found in the record; it further found that the denial of the motion was not prejudicial in any event because Petitioner failed to prove a breach of duty either within the scope of the pleadings or within the scope of the requested amendment (Petition, Appendix B, at pp. 23-24). Under these circumstances, Petitioner clearly was not deprived of due process of law; *Steven's*

Administrator v. *Nichols* (1895), 157 U. S. 370; *Sawyer* v. *Piper* (1903), 189 U. S. 154; *Roller* v. *Murray* (1914), 234 U. S. 738

The trial court's denial of the motion to amend was a correct and proper exercise of its discretionary powers in the circumstances; *Sims* v. *Andrews* (10 Cir. 1941), 118 F. 2d 803, 807; *United States* v. *City of Brookhaven* (5 Cir. 1943), 134 F. 2d 442, 446; *Nordstrom* v. *McAllister Bros. Inc.* (S. D. N. Y.), 9 F. R. Service, 15b.1, Case 5; *Wheeler* v. *West India S. S. Co.* (2 Cir. 1953), 205 F. 2d 354, cert. den. 346 U. S. 889; 3 Moore's Federal Practice, 846-847.

Conclusion

The decision of the court below is correct. The petition fails to present any important reason for granting the writ. No substantial question is raised. There is no conflict of decision. Moreover, the record below is barren of evidence tending to support the questions attempted to be raised by the petition. It is respectfully submitted that this Court should deny the petition.

Respectfully submitted.

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